



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TVI Corporation
File: B-224656
Date: December 9, 1986

DIGEST

1. Contention that specification in invitation for bids (IFB) overstated contracting agency's minimum needs is timely where filed within 10 days after contracting officer advised the protester that a technical feature which the protester maintains was required by the specification would not be needed.
2. Contention that specification in IFB overstated contracting agency's minimum needs by requiring that wiring harness for thermal targets have special power-saving circuitry is without merit where there is no reasonable basis to conclude that the specification imposed that requirement.
3. IFB for thermal targets and wiring harnesses which provided that award would be based on the "price of basic targets" did not require the contracting agency to exclude bids for the harnesses in calculating the lowest bid where the bidding schedule included line items for equal quantities of the targets and harnesses and the reference to "basic targets" in the award clause reasonably encompassed the harnesses, which are necessary to operate the target systems.
4. Although IFB required consideration of multiple awards for components of an integrated thermal target system, contracting agency's decision that aggregate award was necessary to meet its minimum needs was proper where multiple awards would require equipment modification to make components compatible.
5. Contention that contracting agency improperly increased protester's bid by the cost of installing its products is academic where bid would not be low even without the addition of any installation costs.
6. There is no basis to require contracting agency to terminate an existing contract in order to place an order for the items being procured under a basic ordering agreement which did not take effect until after the existing contract was awarded.

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DECISION

TVI Corporation protests the award of a contract to Blane Enterprises, Inc. under invitation for bids (IFB) No. DAHA10-86-B-0009 issued by the United States Property and Fiscal Officer, Idaho, for thermal targets for use by the Idaho Army National Guard. We deny the protest.

The IFB, issued on July 11, 1986, called for bids on 985 thermal targets and wiring harnesses along with related equipment (target repair kits and "J-bolt" hardware sets) for use in tank gunnery training. Bids were to be submitted by line item for each of four different types of targets and harnesses, the repair kits, and the hardware sets.

Two firms, TVI and Blane Enterprises, submitted bids. Blane's total bid for all 10 line items was lower than TVI's total bid. The bids for targets, harnesses, and related equipment were as follows:

	<u>TVI</u>	<u>Blane</u>
Targets (all types)	\$258,904.50	\$346,665
Harnesses (all types)	\$178,672.15	\$ 64,085
Repair kits	\$ 120.00	\$ 300
Hardware	\$ 9,850.00	\$ 5,910
	<u>\$447,546.65</u>	<u>\$416,960</u>
Shipping ^{1/}	\$ 8,000.00	
	<u>\$455,546.65</u>	\$416,960

On September 3, the National Guard made an aggregate award for all 10 line items to Blane. TVI then filed its protest on September 12. On October 24, the agency authorized performance of the contract notwithstanding the protest based on its finding under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2)(A)(ii) (Supp. III 1985), that urgent and compelling circumstances would not permit waiting for a decision on the protest.

^{1/} TVI inserted into its bid a line item for shipping costs to the government, expressed as "not to exceed \$8000." Blane did not separately itemize shipping costs. The contracting officer initially found TVI's bid nonresponsive for failing to specify an exact amount for shipping costs, and TVI challenged this finding in its protest. In its report on the protest, the agency now states that TVI's bid for shipping costs did not make its bid nonresponsive. In light of the agency's position, we regard the issue as academic and not for further consideration.

TVI challenges the award to Blane on several grounds, arguing that (1) Blane's wire harnesses do not comply with a requirement in the IFB for compatibility with the specified target elevating mechanism; (2) the IFB required that award be based on the bids for the targets only, without considering the bids for the harnesses and related equipment; and (3) the agency should have made multiple awards to both bidders instead of an aggregate award to Blane. TVI also argues that the contract with Blane should be terminated in favor of placing orders for the targets under a basic ordering agreement which took effect after the Blane contract was awarded. As discussed in detail below, we find TVI's arguments to be without merit.

Wire harness interoperability

The original IFB contained a list of 16 specifications for the thermal targets; paragraph 11 required that they

"[b]e designed so that power to heat the targets can be provided by Army standard 220VAC, 110VAC, 24VDC, and 12VDC for interoperability with all type classified Army target elevating mechanisms."

TVI states that after it received the IFB, it advised the contracting officer that no device was available which could operate on all four voltages as required in paragraph 11 of the IFB. The Army subsequently issued amendment No. 1 to the IFB which modified the specification as follows:

"The following items of the specifications are clarified: . . . (2) Para 11 dealing with power requirements: 24/12V DC is required for targets proposed."

TVI argues that the term used in paragraph 11--"all type classified Army target elevating mechanisms"--refers to a device which provides power for the target and lifting mechanism exclusively from a battery. TVI maintains that in order to prevent depletion of the battery which would result from a continual power supply to the mechanism, the wire harness for the target requires special circuitry to conserve the battery power by shutting off the current flow to the target while it is not exposed to fire. TVI states that its bid for wire harnesses was based on providing harnesses with this power-saving feature.

On September 5, after the award had been made to Blane, the contracting officer advised TVI that the target elevating mechanisms would be powered by a generator rather than exclusively by a battery, as TVI had assumed. According to

TVI, since a generator provides a constant power supply not subject to depletion like a battery, a simpler, less expensive wire harness without the power-saving feature would have been adequate to meet the National Guard's needs. To the extent the specification requires the more elaborate wire harness, TVI argues, the specification overstates the National Guard's minimum needs. TVI states that had it known that the National Guard planned to use a generator, TVI would have based its bid on the simpler wire harness, and, as a result, would have lowered its bid for the harnesses by approximately two-thirds, making its total bid significantly lower than Blaine's total bid. TVI also asserts that the awardee's bid was nonresponsive because its wire harnesses lack the power-saving feature. We find TVI's arguments to be without merit.

As a preliminary matter, the National Guard maintains that TVI's argument is untimely because the issue was not raised before bid opening. We disagree. Our Bid Protest Regulations require that protests based on alleged improprieties apparent on the face of the IFB be filed before bid opening. 4 C.F.R. § 21.2(a)(1) (1986). In this case, however, the alleged impropriety--a specification which overstates the National Guard's minimum needs--was not apparent until TVI was advised by the contracting officer after bid opening that the National Guard would not be using the power source which TVI maintains is required by the specification. Since the protest was filed within 10 days after TVI was advised of the National Guard's plans, the protest is timely. See 4 C.F.R. § 21.2(a)(2); E. C. Campbell, Inc., B-205533, July 8, 1982, 82-2 CPD ¶ 34.

Even assuming, as TVI contends, that the target elevating mechanism referred to in the specification operates exclusively by battery,^{2/} TVI has not shown that the specification required bidders to provide wire harnesses with the circuitry TVI states is necessary to conserve battery power. First, the specification does not state explicitly that the wire harnesses are to include the power-saving circuitry TVI

^{2/} In support of its assertion that the target elevating mechanism referred to in the IFB operates exclusively on battery power, TVI submitted Department of the Army pamphlet 310-12, which lists the specifications of the U.S. Army Type Classified Automatic Tank Target System; the specifications indicate that the mechanism is powered by a rechargeable 12 volt DC battery. The National Guard failed to respond to TVI's contention in this regard.

describes, nor does the IFB contain any requirement regarding the amount of time the battery must operate before recharging or replacement. Further, TVI offers no evidence to show how long the battery power would last without the power-saving harness circuitry; TVI states only that the battery would be "quickly depleted." TVI thus has not shown that the power depletion would be so rapid that the power-saving circuitry is a prerequisite for any reasonable operation of the target system. Since the specification cannot reasonably be interpreted to require the more elaborate harnesses, we see no basis for concluding that it overstated the National Guard's minimum needs as TVI contends.

Finally, TVI maintains that the Blane bid should be considered nonresponsive to the IFB since the agency has not "verified" that the harnesses will operate with the target elevating mechanism. There is nothing on the face of Blane's bid that would indicate that it intended to offer harnesses that did not conform to the IFB specification. Therefore, Blane's bid is responsive. Bender Shipbuilding & Repair Co., Inc., B-219629.2, Oct. 25, 1985, 85-2 CPD ¶ 462. TVI's complaint is that the agency has not "verified" that Blane can supply harnesses that will work. That is a matter of Blane's responsibility which the agency has affirmatively determined by making award to the firm. Digital Equipment Corp., B-219435, Oct. 24, 1985, 85-2 CPD ¶ 456. We do not review such determinations except in circumstances not present here. 4 C.F.R. § 21.3(f)(5). Moreover, TVI has not shown any reasonable basis for this contention, since the only allegedly incompatible feature of the Blane harness according to TVI is the lack of power-saving circuitry, which we find was not required by the specifications in the IFB.^{3/}

Calculating the lowest bid

TVI argues that the lowest bid should have been calculated solely on the basis of the bids for targets, excluding the bids for the wire harnesses and related equipment. We disagree.

^{3/} In its initial submission, TVI also argued that Blane's bid was nonresponsive because it was based on providing high voltage instead of low voltage harnesses as required by the IFB. The National Guard disputed TVI's assertion, and there is nothing on the face of Blane's bid to support it. In any event, TVI abandoned this argument in its comments on the agency report, focusing instead on the alleged incompatibility of the Blane harness with the target elevating mechanism.

Section M.6 of the IFB provided as follows with regard to the evaluation of bids:

"CONTRACT AWARD. The government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation will be most advantageous to the government, cost or price and other factors considered. Award factors will include but not [be] limited to the following:

a. Price of basic targets.

b. Cost of government-furnished labor and materials to emplace, maintain and replace target system."

TVI argues that by referring solely to the "price of basic targets," the National Guard effectively excluded bids for the other items from the calculation of the lowest price. According to TVI, it was reasonable to conclude that the Army would procure only the targets, since, unlike the harnesses, the targets cannot be reused.

The bidding schedule calls for bids on equal quantities of targets and wire harnesses; accordingly, it was more reasonable for bidders to assume that the targets and harnesses would be used together rather than, as TVI maintains, that the National Guard intended only to replace used targets. Most significantly, the line items in the bidding schedule for items other than targets would be superfluous under TVI's interpretation. Further, the reference to "basic targets" in section M.6 of the IFB, while not as clear as it should have been, reasonably encompasses the wire harnesses, equipment which is required to operate the target system. Thus, in our view, the only reasonable interpretation of the IFB, considering both the bidding schedule and section M.6, is that bids on all the items would be considered.

Multiple awards

TVI argues that the National Guard should have made multiple awards to both bidders instead of an aggregate award to Blane. Specifically, TVI contends that the National Guard should have awarded a contract for the targets to TVI based on its lower bid for the targets (\$258,904.50 v. \$346,665 bid by Blane), and awarded a contract solely for harnesses to Blane, whose bid for those items was lower (\$64,085 v. \$178,672.15 bid by TVI).

As a preliminary matter, we agree with TVI that the National Guard was required to consider making multiple awards. Our Office has required award on the basis of the most favorable overall cost to the government. Consequently, where multiple awards are not prohibited by the solicitation and would result in the lowest overall cost to the government, separate awards to different bidders who are low on individual items, rather than an aggregate award, are proper. See Talbott Development Corp., B-220641, Feb. 11, 1986, 86-1 CPD ¶ 152. Here, while the National Guard states that multiple awards were not intended, the IFB did not clearly indicate that an aggregate award was intended. In fact, the agency failed to insert a check in the space provided to show whether or not the multiple awards clause, FAR, 48 C.F.R. § 52.214-22, set out in section M.1 of the IFB, was applicable.

Even where a solicitation fails to specifically provide for award solely on an aggregate basis, however, an aggregate award is proper where, as here, it is evident from the solicitation that the contracting agency's minimum needs require it and there is no prejudice to other bidders. See Blinderman Const. Co., B-216298, Dec. 24, 1984, 84-2 CPD ¶ 688, aff'd on reconsideration, B-218028, Feb. 20, 1985, 85-1 CPD ¶ 214. There clearly was no prejudice to TVI, the only other bidder, since its bid covered all the items in the IFB, and it thus was not misled into bidding on only some of the items. Id. Further, there was no requirement in the IFB specifications that the harness offered be compatible with other than the bidder's targets. There also is nothing in the record showing that different manufacturers' targets and harnesses are normally interchangeable. On the contrary, the National Guard states that the targets and the Blane harnesses are not compatible unless modified through the use of adapters or some other means, thus decreasing the efficiency of range operations and adding set-up and repair time. Although TVI states without elaboration that it disagrees with the National Guard's conclusion regarding the impact on the efficiency of range operations, TVI concedes that some modification would be required to use the TVI targets with the Blane harnesses. Accordingly, we find that it was reasonable for the National Guard to make an aggregate award for components intended to operate as part of the same system, where it is undisputed that the components would require modification to operate properly together.

Since the decision to make an aggregate award was justified based on the need for a modification of the targets or harnesses, which TVI concedes, we need not consider TVI's other contention that the National Guard used a different model than TVI bid under the IFB in determining the compatibility of the TVI target and the Blane harness.

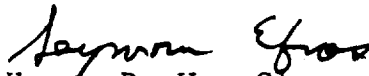
Installation Costs

TVI also challenges the addition of \$93,348.05 to its aggregate bid as the cost of installing the TVI targets, again arguing that the cost was calculated improperly based on a different type of target than the one bid by TVI under the IFB. We need not consider this argument in detail, however, since, even assuming that there would be no installation costs, TVI's total bid still was higher than Blane's total bid.

Basic ordering agreement

Finally, TVI argues that the National Guard should order the targets under a basic ordering agreement (BOA) for thermal targets which took effect after the award to Blane was made. We find this argument to be without merit. A contracting agency is not required to place an order under a BOA. See FAR, 48 C.F.R. § 16.703(c). Further, although TVI maintains that award under the BOA would be preferable in terms of price and the products available, TVI has not shown, and we see no reason, why the National Guard would be required to terminate the existing contract with Blane in order to place an order under the subsequent BOA.

TVI has requested that it be allowed to recover its bid preparation costs and the costs of pursuing the protest. Since we find the protest to be without merit, we deny the request for costs. 4 C.F.R. § 21.6(d), (e).

for 
Harry R. Van Cleve
General Counsel